

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC EMPLOYMENT  
RELATIONS BOARD

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LARRY FARRINGTON,	)	
	)	
Appellant,	)	
	)	
and	)	CASE NO. 97-MA-01
	)	
STATE OF IOWA (DEPARTMENT OF	)	
CORRECTIONS),	)	
	)	
Appellee.	)	

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DECISION ON REVIEW

This matter is before us on a petition for our review of a Proposed Decision and Order issued by an administrative law judge (ALJ) on September 16, 1996, granting the State's motion to dismiss this state employee disciplinary action appeal. The ALJ's proposal, issued after a nonevidentiary hearing, is based on Farrington's failure to file his appeal with the director of the Iowa Department of Personnel (IDOP) pursuant to Iowa Code section 19A.14(2) and IDOP subrule 581-12.2(6).

Farrington's subsequent petition for review included an application for an evidentiary hearing before the Board pursuant to PERB rule 621-11.8(19A,20). We granted Farrington's application and ordered an evidentiary hearing relating only to the motion to dismiss and not the merits of the disciplinary matter itself.

That evidentiary hearing was held before us on February 14, 1997. Both parties appeared and participated through counsel; Pamela Prager for Farrington and Denise Hill for the State. Both parties submitted post-hearing briefs by March 14, 1997.

Based upon the entire record, and having considered the parties' briefs and oral arguments, we issue the following findings of fact and conclusions of law.

#### FINDINGS OF FACT

At all times relevant to the instant matter, Iowa Code section 19A.14(2) and IDOP subrules 581-11.2(5) and 581-12.2(6) addressed the appeal rights of disciplined noncontract state employees, as follows:

##### **19A.14 Grievances and discipline resolution.**

\* \* \*

2. *Discipline resolution.* A merit system employee, except an employee covered by a collective bargaining agreement, who is discharged, suspended, demoted, or otherwise reduced in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. . . .

IDOP subrule 581-11.2(5) provided:

11.2(5) Appeal of a suspension, reduction of pay within the same pay grade, disciplinary demotion or discharge shall be in accordance with Chapter 12 of these rules. The written statement to the employee of the reasons for the discipline shall include the verbatim content of subrule 12.2(6).

IDOP subrule 581-12.2(6) provided:

12.2(6) *Appeal of disciplinary actions.* Any nontemporary, noncontract employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status, shall bypass steps one and two of the grievance

procedure provided for in rule 581-12.1(19A) and may file an appeal in writing to the director for a review of the action within 14 calendar days after the effective date of the action. . . .

If not satisfied with the decision of the director, the employee may request an appeal hearing before the public employment relations board. The request must be filed within 30 calendar days after the date the director's decision was issued or should have been issued. . . . [Emphasis added]

In both subrule 581-12.2(6) and the statute, the reference to "director" is the director of IDOP. See Iowa Code section 19A.2(4) and 581 IAC 1.1 (19A).

Prior to May 10, 1996 Farrington was employed as a noncontract corrections supervisor by the Iowa Department of Corrections (DOC) at the Anamosa Men's Reformatory. On that date Farrington received a notice of disciplinary demotion. The letter recited the reasons for the demotion and concluded with the following sentence:

If you choose to grieve this action, please refer to the attached copy of the IDOP rules, specifically rule 12.2(6) appeal of disciplinary action.

According to Tamia Buscher, the administrative assistant responsible for preparing the documents related to Farrington's disciplinary matters, her normal practice is to attach to disciplinary letters a copy of chapter 12 of IDOP's rules, subrule 581-12.2(6) of which, on the date of the discipline here involved, required the employee to direct any appeal to the IDOP director. In the present case, however, the version of IDOP subrule 581-12.2(6) attached to the letter received by Farrington was an outdated version which required the employee to direct any appeal

"to the appointing authority." Consequently, Farrington filed his appeal with Sally Halford, the director of DOC, the appointing authority.

The record does not support, nor does Farrington allege, intentional misrepresentation on the part of DOC in attaching the wrong version of IDOP subrule 581-12.2(6).

Farrington had filed one disciplinary appeal in the past with IDOP, as the current IDOP subrule 581-12.2(6) requires. However, in that instance, Farrington was supplied with the correct current version of the rule.

After filing his grievance with Halford on May 17, 1996, Farrington did not receive a response or any communication advising him that his grievance was improperly filed. When a period of time had elapsed with no response from Halford, Farrington appealed to PERB by filing a State Employee Disciplinary Action Appeal on July 8, 1996.

#### CONCLUSIONS OF LAW

The State argues that PERB lacks jurisdiction based on Farrington's failure to file the appeal with the IDOP director. The State requests dismissal of this appeal.

Farrington argues that his failure to properly file the appeal was attributable to DOC's error in giving him outdated, incorrect disciplinary appeal guidelines on which he legitimately relied. Farrington further argues that due process requires that he be given proper notice and an opportunity to have his appeal heard. Farrington requests denial of the State's Motion to Dismiss

and an order to allow the matter to proceed on the merits, or, in the alternative, be remanded to IDOP for initial consideration.

We conclude that Farrington's failure to properly follow the disciplinary appeal procedure set forth in Iowa Code section 19.A.14(2) and IDOP subrule 581-12.2(6) was attributable to DOC's inadvertent error in giving him flawed notice on which he reasonably relied. The fact that Farrington previously filed a disciplinary appeal correctly is of little import where he was given the appropriate rules to follow in the previous instance, but outdated rules in this case. Since DOC failed to give Farrington proper notice of his appeal rights as required by IDOP subrule 581-11.2(5), we conclude that the proper result in this case is to treat the disciplinary appeal as if it had been properly filed with the IDOP director and remand it to IDOP for appropriate action. Should Farrington subsequently wish to appeal from the IDOP director's decision, a new appeal with PERB will be required.

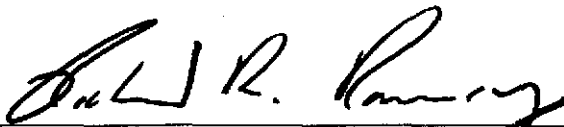
Consequently, we enter the following:

ORDER

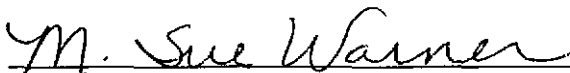
The State's motion to dismiss is DENIED. Farrington's appeal is remanded to the Director of the Iowa Department of Personnel for consideration pursuant to Iowa Code section 19A.14(2). This order constitutes final agency action.

DATED at Des Moines, this 7<sup>th</sup> day of May, 1997.

PUBLIC EMPLOYMENT RELATIONS BOARD



Richard R. Ramsey, Chairman



M. Sue Warner, Board Member



Elizabeth L. Seiser, Board Member